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Federal Communications Commission  
Washington, D.C. 20554

JUL 24 1996

Rudolph Mitchell, Chairman  
State of South Carolina  
Public Service Commission  
Post Office Drawer 11649  
Columbia, South Carolina 29203

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Dear Chairman Mitchell:

Thank you for the letter dated May 14, 1996, from the members of the Public Service Commission (PSC), regarding the Commission's policies for licensing 800 MHz Specialized Mobile Radio (SMR) systems. The PSC expresses concern regarding the Commission's decision to reallocate a portion of the 800 MHz band. The PSC also expresses concern about the proposed use of competitive bidding procedures and the potential relocation of existing licensees.

On December 15, 1995, the Commission issued a First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (First Report and Order) in PR Docket No. 93-144, which addressed the treatment of the upper 200 channels of the 800 MHz SMR spectrum. The First Report and Order contains important safeguards to ensure that the rights of incumbents are protected. First, no incumbent may be relocated unless comparable spectrum is available. Second, the incumbent must be provided with comparable facilities with the full cost borne by the wide-area licensee. Finally, the Commission is seeking additional public comment on what factors should be considered to ensure that alternative facilities are indeed comparable and relocated incumbents are made whole. For your convenience and information, enclosed is a copy of the Press Release concerning the First Report and Order, which includes a summary of the principal decisions and proposals made.

The Commission's decision to auction 800 MHz SMR spectrum is consistent with Section 309(j) of the Communications Act, which sets forth certain criteria for determining when auctions should be used to award spectrum licenses. Pursuant to these criteria, auctions are to be used to award mutually exclusive initial licenses or construction permits for services likely to involve the licensee receiving compensation from subscribers. The statute also requires that the Commission determine that auctioning the spectrum will further the public interest objectives of Section 309(j)(3) by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use. The Commission has concluded that auctioning of SMR licenses satisfies these criteria. In particular, we believe that auctions will minimize administrative or judicial delays in licensing, particularly in comparison to other licensing methods such as comparative hearings, lotteries (which are specifically prohibited by the statute if the service is auctionable), or "first-come, first-served" procedures. We note that the statute does not distinguish between new services (such as Personal Communications Services) and existing

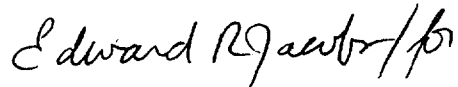
Rudolph Mitchell, Chairman

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services in terms of whether initial licenses in a given service are auctionable. As noted above, however, the Commission's decision to use auctions applies only to issuance of initial licenses in the service, and is not intended to affect rights afforded to licensees under existing authorizations.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward R. Furth" with a stylized flourish at the end.

David L. Furth  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

Enclosure

State of South Carolina



Public Service Commission

May 14, 1996

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JC  
PIS ADU  
WTP for  
Response from  
m. Farquhar

The Honorable Reed Hundt, Chairman  
Federal Communications Commission  
1919 M St., N.W., Room 814  
Washington, D.C. 20554

IN RE: 800 MHZ FREQUENCY REALLOCATIONS PR DOCKET NO.  
93-144

Dear Chairman Hundt:

We wish to express our reservations about action being taken by the Federal Communications Commission concerning 800 MHz radio spectrum. This matter was brought to our attention by Duke Power Company, an electric utility which serves large areas of our State and is under this Commission's regulatory jurisdiction. It is our understanding that the FCC plans to reallocate a significant portion of spectrum from this band, from private to commercial uses, to award licenses in the band by auction, and to allow commercial auction winners to force incumbent users of the band to relocate to other channels.

Frequencies in the 800 MHz band have been used successfully for many years to provide, among other things, safety-oriented critical services for public utilities. While the need to enhance federal revenues and the benefits of expanding commercial enterprises are understandable, we question whether these benefits justify selecting for reallocation, channels which have been critical in facilitating the safe and efficient provision of electric power and other public utility services for many years.

We understand that Duke Power has invested millions of dollars constructing a large-scale dedicated telecommunications system which covers the company's entire service area with the kind of highly-reliable grade of service necessary to meet the responsibilities

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of a public utility. This system has proven critical to Duke for the rapid and efficient restoration of power outages, as well as for handling situations such as downed power lines which may present a public safety hazard. It has proven invaluable during natural disasters, such as occurred in the aftermath of Hurricane Hugo, and in the major ice storm emergencies during the winter of 1995.

Our Commission is responsible for ensuring that the provision of basic utility services to the public is performed safely and efficiently under all conditions. In this regard, Duke has an outstanding record. We believe that this record has been made possible, in significant part, through the telecommunications capabilities made possible to Duke through exclusive 800 MHz spectrum assignments. We do not believe it is in the public interest for Duke to suffer any interruption of its telecommunications capabilities.

Therefore, we respectfully request that the FCC either continue to maintain dedicated spectrum for systems such as Dukes or that a transition plan, in full accordance with Comments filed at the FCC by Duke, be established which will provide the necessary safeguards to ensure that the proposed reallocation will create no negative impact on the public welfare. Any interruption in the Duke system could prove to be a serious detriment to the public. Duke's system is complex and cannot simply be moved to other channels on a random basis or reconstructed in a piecemeal manner, because of the number of channels involved and the site-interdependent re-use of channels within the telecommunications system. We would also be uncomfortable if Duke were forced to purchase service from, and have to rely on, the facilities of a commercial carrier.

We are advised that Rick D. Rhodes, Communication Counsel for Duke Power Company, has undertaken responsibility for complying with the FCC's ex parte rules, therefore we are providing him with a copy of this correspondence.

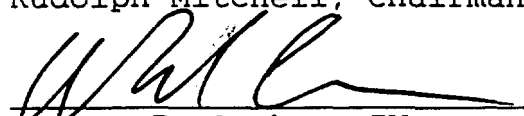
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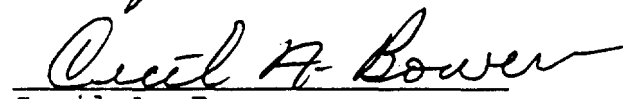
Thank you for your consideration of our views in this matter. We look forward to hearing from you at your earliest convenience with regard to the concerns discussed herein.

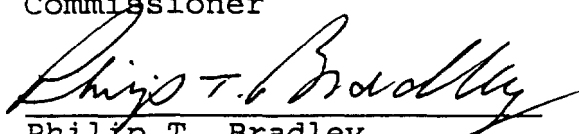
Respectfully submitted,

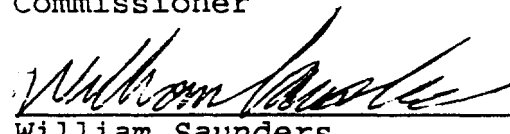
  
Rudolph Mitchell, Chairman


  
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c: Rick D. Rhodes, Esquire  
Duke Power Company

cc: Commercial Wireless Division  
Dockets  
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